

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

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TEXAS-EASTERN

SYMBOL TECHNOLOGIES, INC.,

Plaintiff,

v.

METROLOGIC INSTRUMENTS, INC.

Defendant.

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BY _____

Civil Action No. 2:05cv509

Jury Trial Demanded

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Symbol Technologies, Inc. ("Symbol"), by its counsel and for its Complaint against Defendant Metrologic Instruments, Inc. ("Metrologic"), alleges as follows:

PARTIES

1. Symbol is a Delaware corporation having its principal place of business at One Symbol Plaza, Holtsville, New York 11742-1300. Symbol develops and markets innovative, high-performance products, principally laser bar code scanners and scan engines.
2. Metrologic is a New Jersey corporation having its principal place of business at 90 Coles Road, Blackwood, New Jersey 08012. Metrologic sells in the United States laser bar code scanners and/or components thereof.

JURISDICTION AND VENUE

3. This is an action arising under the patent laws of the United States, 35 U.S.C. §§ 101 *et seq.* This Court has subject matter jurisdiction pursuant to 35 U.S.C. § 271 *et seq.* and 28 U.S.C. §§ 1331 and 1338.

4. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c) and 1400.
5. This Court has personal jurisdiction over Metrologic pursuant to the provisions of the Texas Long Arm Statute, Tex. Civ. Prac. & Rem. Code Ann. § 17.042 (1997), and the laws of the United States. Metrologic offers for sale and sells laser bar-code scanners and/or components thereof in the United States and in this judicial district. At least some of those products infringe various patents owned by Symbol. In addition, Metrologic places its infringing products in the stream of commerce, which stream is directed at this district and division. As a result of the foregoing, jurisdiction exists specifically as well as generally

THE PATENTS

6. Symbol is the owner by assignment of United States Letters Patent No. 5,479,002 ("the '002 patent"), entitled "Bar Code Scanner With Scanning Beam And/Or Field Of View Adjustable About Three Mutually Orthogonal Axes." The '002 patent duly and legally issued December 26, 1995. A copy of the '002 patent is attached to this Complaint as Exhibit A.
7. Symbol is the owner by assignment of United States Letters Patent No. 6,631,845 ("the '845 patent"), entitled "Two Window Optical Scanner." The '845 patent duly and legally issued October 14, 2003. A copy of the '845 patent is attached to this Complaint as Exhibit B.
8. Symbol is the owner by assignment of United States Letters Patent No. 5,646,390 ("the '390 patent"), entitled "Dataform Readers And Methods."

The '390 patent duly and legally issued July 8, 1997. A copy of the '390 patent is attached to this Complaint as Exhibit C.

9 Symbol is the owner by assignment of United States Letters Patent No. 5,521,366 ("the '366 patent"), entitled "Dataform Readers Having Controlled And Overlapped Exposure Integration Periods." The '366 patent duly and legally issued May 28, 1996. A copy of the '366 patent is attached to this Complaint as Exhibit D.

10. Symbol is the owner by assignment of United States Letters Patent No. 5,591,952 ("the '952 patent"), entitled "Bar Code Reader " The '952 patent duly and legally issued January 7, 1997. A copy of the '952 patent is attached to this Complaint as Exhibit E.

11. Symbol is the owner of all rights, title and interest in and to the '002, '845, '390, '366 and '952 patents (collectively "the Symbol Patents") and is entitled to sue for past and future infringement of those patents.

COUNT 1

12 Symbol repeats and realleges the allegations in paragraphs 1-11.

13. Metrologic has imported into the United States, sold and/or offered for sale in the United States, products covered by the '002 patent and/or products that when used in accordance with their instructions practice the methods covered by the '002 patent, including at least the MS7120 Orbit.

14. Metrologic has had actual and/or constructive notice and knowledge of the '002 patent. The filing of this Complaint also constitutes notice in accordance with 35 U.S.C. § 287. Despite such notice, Metrologic continues to import, sell and/or offer for sale in the United States products

covered by the '002 patent and/or products that when used in accordance with their instructions practice the methods covered by the '002 patent.

15. Metrologic has infringed and/or induced the infringement of and/or contributed to the infringement of the '002 patent by importing into, offering for sale, or selling in the United States, or by intending that others import into, offer for sale, or sell in the United States, products covered by the '002 patent and/or products that when used in accordance with their instructions practice the methods covered by the '002 patent.
16. Metrologic has willfully infringed and continues to willfully infringe the '002 patent. The continued infringement of the '002 patent by Metrologic has damaged and will continue to damage Symbol.
17. The infringement of the '002 patent by Metrologic has caused and will continue to cause Symbol irreparable harm unless preliminarily and permanently enjoined by the Court. Symbol has no adequate remedy at law.

COUNT II

18. Symbol repeats and realleges the allegations in paragraphs 1-11.
19. Metrologic has imported into the United States, sold and/or offered for sale in the United States, products covered by the '845 patent, including at least the MS1690 Focus.
20. Metrologic has had actual and/or constructive notice and knowledge of the '845 patent. The filing of this Complaint also constitutes notice in accordance with 35 U.S.C. § 287. Despite such notice, Metrologic

continues to import, sell and/or offer for sale in the United States products covered by the '845 patent.

21. Metrologic has infringed and/or induced the infringement of and/or contributed to the infringement of the '845 patent by importing into, offering for sale, or selling in the United States, or by intending that others import into, offer for sale, or sell in the United States, products that are covered by the '845 patent.

22. Metrologic has willfully infringed and continues to willfully infringe the '845 patent. The continued infringement of the '845 patent by Metrologic has damaged and will continue to damage Symbol.

23. The infringement of the '845 patent by Metrologic has caused and will continue to cause Symbol irreparable harm unless preliminarily and permanently enjoined by the Court. Symbol has no adequate remedy at law.

COUNT III

24. Symbol repeats and realleges the allegations in paragraphs 1-11.

25. Metrologic has imported into the United States, sold and/or offered for sale in the United States, products covered by the '390 patent and/or products that when used in accordance with their instructions practice the methods covered by the '390 patent, including at least the MS1690 Focus.

26. Metrologic has had actual and/or constructive notice and knowledge of the '390 patent. The filing of this Complaint also constitutes notice in accordance with 35 U.S.C. § 287. Despite such notice, Metrologic continues to import, sell and/or offer for sale in the United States products

covered by the '390 patent and/or products that when used in accordance with their instructions practice the methods covered by the '390 patent.

27. Metrologic has infringed and/or induced the infringement of and/or contributed to the infringement of the '390 patent by importing into, offering for sale, or selling in the United States, or by intending that others import into, offer for sale, or sell in the United States, products that are covered by the '390 patent and/or products that when used in accordance with their instructions practice the methods covered by the '390 patent.
28. Metrologic has willfully infringed and continues to willfully infringe the '390 patent. The continued infringement of the '390 patent by Metrologic has damaged and will continue to damage Symbol.
29. The infringement of the '390 patent by Metrologic has caused and will continue to cause Symbol irreparable harm unless preliminarily and permanently enjoined by the Court. Symbol has no adequate remedy at law.

COUNT IV

30. Symbol repeats and realleges the allegations in paragraphs 1-11.
31. Metrologic has imported into the United States, sold and/or offered for sale in the United States, products covered by the '366 patent and/or products that when used in accordance with their instructions practice the methods covered by the '366 patent, including at least the MS1690 Focus.
32. Metrologic has had actual and/or constructive notice and knowledge of the '366 patent. The filing of this Complaint also constitutes notice in accordance with 35 U.S.C. § 287. Despite such notice, Metrologic

continues to import, sell and/or offer for sale in the United States products covered by the '366 patent and/or products that when used in accordance with their instructions practice the methods covered by the '366 patent.

33. Metrologic has infringed and/or induced the infringement of and/or contributed to the infringement of the '366 patent by importing into, offering for sale, or selling in the United States, or by intending that others import into, offer for sale, or sell in the United States, products that are covered by the '366 patent and/or products that when used in accordance with their instructions practice the methods covered by the '366 patent
34. Metrologic has willfully infringed and continues to willfully infringe the '366 patent. The continued infringement of the '366 patent by Metrologic has damaged and will continue to damage Symbol.
35. The infringement of the '366 patent by Metrologic has caused and will continue to cause Symbol irreparable harm unless preliminarily and permanently enjoined by the Court. Symbol has no adequate remedy at law.

COUNT V

36. Symbol repeats and realleges the allegations in paragraphs 1-11
37. Metrologic has imported into the United States, sold and/or offered for sale in the United States, products covered by the '952 patent and/or products that when used in accordance with their instructions practice the methods covered by the '952 patent, including at least the MS2020 Stratos.

38. Metrologic has had actual and/or constructive notice and knowledge of the '952 patent. The filing of this Complaint also constitutes notice in accordance with 35 U.S.C. § 287. Despite such notice, Metrologic continues to import, sell and/or offer for sale in the United States products covered by the '952 patent and/or products that when used in accordance with their instructions practice the methods covered by the '952 patent.
39. Metrologic has infringed and/or induced the infringement of and/or contributed to the infringement of the '952 patent by importing into, offering for sale, or selling in the United States, or by intending that others import into, offer for sale, or sell in the United States, products that are covered by the '952 patent and/or products that when used in accordance with their instructions practice the methods covered by the '952 patent.
40. Metrologic has willfully infringed and continues to willfully infringe the '952 patent. The continued infringement of the '952 patent by Metrologic has damaged and will continue to damage Symbol.
41. The infringement of the '952 patent by Metrologic has caused and will continue to cause Symbol irreparable harm unless preliminarily and permanently enjoined by the Court. Symbol has no adequate remedy at law.

WHEREFORE, Symbol prays for a judgment against Metrologic as follows:

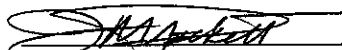
- A. Adjudge that Metrologic is infringing the Symbol Patents;

- B. Adjudge that the infringement by Metrologic of the Symbol Patents was willful, and that the continued infringement by Metrologic of the Symbol Patents is willful;
- C. Enter an order preliminarily and permanently enjoining Metrologic from any further acts of infringement of the Symbol Patents;
- D. Award Symbol damages in an amount adequate to compensate Symbol for the infringement by Metrologic of the Symbol Patents, but in no event less than a reasonable royalty under 35 U.S.C. § 284;
- E. Enter an order trebling any and all damages awarded to Symbol by reason of the willful infringement by Metrologic of the Symbol Patents, pursuant to 35 U.S.C. § 284;
- F. Enter an order awarding Symbol interest on the damages awarded and its costs pursuant to 35 U.S.C. § 284;
- G. Declare this an exceptional case and award Symbol its costs, expenses, and reasonable attorneys' fees pursuant to 35 U.S.C. § 285 and all other applicable statutes, rules, and common law; and

H. Award Symbol such other and further relief as the Court may deem
just and proper.

Dated: November 5, 2005

Respectfully submitted,



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Damon M. Young

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